

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA**

CHARLES MORROW, MICHAEL OVERTON, JAMES MARTY SMITH, MICHAEL SMITH, MARK MURPHY and DWAYNE CLEVELAND, Individually and on behalf of similarly situated employees,

Plaintiffs,

V.

3:07-CV617-MHT

**FLOWERS FOODS, INC., FLOWERS
BAKING CO. OF OPELIKA, LLC**

Defendants.

MOTION TO CONDITIONALLY
CERTIFY CLASS AND FACILITATE CLASS NOTICE

COME NOW Plaintiffs, by and through their counsel, respectfully submit this Motion to Conditionally Certify Class and Facilitate Class Notice.

In support of this motion, Plaintiffs submit the accompanying memorandum of law and supporting affidavits of Charles Morrow and Michael Overton (filed concurrently herewith). Plaintiffs request that the Court authorize this collective action, pursuant to 29 U.S.C. § 216(B), for conditional class certification, and to order the requested identification of the names, addresses, and first and/or preferred languages, if other than English, of all former and current route distributors, or other persons performing a service and/or delivery function on a non-hourly basis, who worked overtime while employed at Flowers Foods subsidiaries, from July 2, 2004 to the present. In the alternative, Plaintiffs request that the Court authorize this collection action for conditional class certification for all former and current route distributors, or other

persons performing a service and/or delivery function on a non-hourly basis, who worked overtime while employed at Flowers Foods subsidiaries within the state of Alabama from July 2, 2004 to the present.

In addition, Plaintiffs request the Court to authorize the issuance of notice to be mailed to the above identified current and former employees, informing them of their right to join this action as opt-in Plaintiffs.

Attached hereto as "Exhibit 1" is a proposed Notice of Plaintiff's right to Opt-In to Collective Action against Flowers Foods.

Respectfully submitted,

/s/ Amy A. Weaver

Amy A. Weaver, ASB-6878-Y82A
One of the Attorneys for Plaintiffs

OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that on this the 21st day of September, 2007, I electronically filed the foregoing Motion to Conditionally Certify Class and Facilitate Class Notice with the Clerk of the Court using the CM/ECF system which will send notification of such filing to:

Sandra B. Reiss
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/s/ Amy A. Weaver

Amy A. Weaver

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA**

| | | |
|---|---|-----------------------|
| CHARLES MORROW, MICHAEL |) | |
| OVERTON, JAMES MARTY SMITH, |) | |
| MICHAEL SMITH, MARK MURPHY and |) | |
| DWAYNE CLEVELAND, Individually and |) | |
| on behalf of similarly situated employees, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | 3:07-CV617-MHT |
| |) | |
| FLOWERS FOODS, INC., FLOWERS |) | |
| BAKING CO. OF OPELIKA, LLC |) | |
| |) | |
| Defendants. |) | |

NOTICE OF PENDING FAIR LABOR STANDARDS ACT LAWSUIT

To: Present and former route distributors assigned to an in-state route of Flowers Foods, Inc. and its subsidiaries, including Flowers Baking Company of Opelika, LLC, who were not paid time and one half for time worked in excess of forty (40) hours in a given work week from July 2, 2004, to the present.

Re: Overtime claims against Flowers Foods, Inc.

I. INTRODUCTION

The purpose of this Notice is to inform you of the existence of a collective action lawsuit alleging unpaid overtime, to advise you of how your rights may be affected by this suit, and to instruct you on the procedure for participation in this suit, should you decide that you wish to do so.

II. DESCRIPTION

On July 2, 2007, a lawsuit was filed in the United States District Court for the Middle District of Alabama against Flowers Foods, Inc. and Flowers Baking Co. of Opelika, LLC ("Flowers") by Charles Morrow and Michael Overton, on behalf of themselves and other similarly situated route distributors of Flowers employed at the facilities in Alabama that delivered bread to routes in-state.

This lawsuit alleges that Flowers violated the Fair Labor Standards Act (“FLSA”) by requiring employees to work more than forty (40) hours each work-week and not paying employees at a rate of time and one half for hours worked in excess of forty (40) during a work-week. Plaintiffs seek unpaid/ underpaid overtime wages and liquidated damages in an amount equal to the unpaid/ underpaid overtime wages. In addition, the Plaintiffs have requested an injunction to prohibit Flowers from engaging in future violations of the FLSA.

Flowers contends that route distributors are not employees and thus are not subject to the FLSA requirements. Alternatively Flowers contends that, if route distributors are employees of Flowers, they are exempt from the FLSA requirements due to the Outside Sales Person exemption or Motor Carrier Act exemption.

The court has not ruled on the merits of the Plaintiffs’ claims or on the denials and other defenses raised by Flowers.

III. COMPOSITION OF THE CLASS

Plaintiffs also seek to recover damages against Flowers on behalf of themselves and also on behalf of the other similarly situated employees of Flowers, past and present. The Court has ruled that the lawsuit shall be conditionally maintained as a collective action brought by the named Plaintiffs, individually and on behalf of the class members. The Court’s ruling rests on its preliminary determination that there may be other employees of Flowers who are similarly situated and who desire to join or opt-in to the lawsuit. Specifically, the Court has conditionally certified a class consisting of the following:

All current and former route distributors, or other persons performing a service and/or delivery function on a non-hourly basis, who worked overtime while employed at Flowers Foods subsidiaries, and were not compensated for such overtime work at an amount equaling on and one-half times the employee’s regular rate of pay. Such persons shall not include persons who, as part of their duties, cross state lines to make deliveries.

Just as is true in any lawsuit, participation does not mean that the named Plaintiffs or anyone opting into this collective action, is by participation alone, entitled to recover against Flowers.

IV. YOUR RIGHT TO PARTICIPATE IN THIS LAWSUIT

If you fit the definition of the class described above, you may join this suit or “opt in” by returning in the enclosed envelope or by mailing by First Class mail, postage prepaid, a completed and signed “Consent to Become Party Plaintiff” form postmarked on or before _____, 2007, to Plaintiff’s counsel at the following address:

WHATLEY, DRAKE, & KALLAS, LLC

P.O. Box 10647
Birmingham, Alabama 35202-0647
(205) 328-9576

Further information about this Notice, the deadline for filing a “Consent to Become Party Plaintiff,” or questions concerning this lawsuit, may be obtained by writing Plaintiff’s counsel at the number and address stated above, or by calling attorneys Joseph P. Guglielmo and Amy A. Weaver of Whatley, Drake & Kallas, LLC, at 205-328-9576 or 212-447-7007.

The law firm of Whatley, Drake & Kallas, LLC, has agreed to represent the Plaintiffs in this case, and by signing the consent to representation and the contract agreement you agree to their representation and the terms therein. As stated in the contract, Whatley, Drake & Kallas, LLC is not charging you an hourly fee for their services. Their fee is set up on a contingency basis, and any money owed them will only be collected after the completion of a successful lawsuit.

Failure to timely return or properly complete and sign the “Consent to Become Party Plaintiff” form by the above date will result in your not being able to participate in this lawsuit.

The law prohibits retaliation against anyone participating in a lawsuit of this nature.

Even if you file a “Consent to Become Party Plaintiff” form, your continued right to participate in this lawsuit may depend upon a later decision by the District Court that you and the Plaintiffs are “similarly situated” in accordance with federal law.

V. EFFECT OF JOINING THIS SUIT

If you choose to join this suit, you will be bound by the judgment, whether it is favorable or unfavorable. While this suit is proceeding, you may be required to provide information, appear for deposition, and/or testify in court.

VI. NO OPINION EXPRESSED AS TO THE MERITS OF THE CASE

This notice has been authorized by Judge Myron Thompson of the United States District Court for the Middle District of Alabama solely for the purpose of notifying individuals of the lawsuit. The Court has taken no position in this case regarding the merits of Plaintiff’s claims or the defenses of Flowers. This Notice should not be taken as an indication that you should or should not join the lawsuit.

VII. FURTHER INFORMATION

The pleadings and other documents of record in this lawsuit may be examined and copies made at any time during regular business hours at the office of the Clerk of the United

States District Court for the Middle District of Alabama located at the Frank M. Johnson United States Courthouse Complex, One Church Street, Montgomery, Alabama.

Flowers Foods, Inc. is represented by: Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

Flowers Baking Co. of Opelika, LLC, is represented by: Ogletree, Deakins, Nash, Smoak Stewart, P.C.